



January 8, 2015

Hon. Charles R. Breyer  
United States District Court  
For The Northern District of California  
San Francisco Courthouse  
Courtroom 6 - 17th Floor  
450 Golden Gate Avenue,  
San Francisco, CA 94102

Re: *In re Volkswagen "Clean Diesel" Marketing, Sales Practices, and Products Liability Litigation*, MDL No. 2672

Per the criteria set forth in Doc. 336, I respectfully request that this Court consider my application to become a member of the steering committee in the aforementioned litigation. I believe that my best use would be as a member of the steering committee tasked with overseeing the e-discovery portion of the lawsuit(s).

(1) I have material litigation experience, as plaintiff's counsel and defense counsel, in consumer class action, complex commercial, and financial services litigation, as well as prosecuting and settling complex residential mortgage-backed securities ("RMBS") litigation. Examples include:

- a. Lead counsel, on behalf of a prominent New Jersey regional bank, in a multi-million dollar RMBS trustee lawsuit against U.S. Bank. *VNB Realty v. U.S. Bank*, No. 2:13-cv-04743 (D.N.J.).
  - i. Presiding Judges: The Hon. William J. Martini and Hon. Mark Falk, U.S. Dist. Court for the Dist. of N.J., Martin Luther King Building & U.S. Courthouse, 50 Walnut St. Rm. 4015, Newark, NJ 07101.
- b. Key member of "Talcott Franklin Group" that negotiated, and litigated in support of, an RMBS Settlement Agreement on behalf of scores of institutional investors regarding loan re-purchase claims against ResCap, LLC (formerly the mortgage arm of GMAC) in S.D.N.Y. bankruptcy.
  - i. Presiding Judge: The Hon. Martin Glenn, Bankruptcy Judge, U.S. Dist. Court for the S.D.N.Y., One Bowling Green, New York, NY 10004-1408.
- c. Lead counsel for a putative class of African American business borrowers, alleging violation of the E.C.O.A. against a Michigan bank. *Tillman Industrial Properties, et. al. v. Mercantile Bank et. al.*, No. 13-08428-CZB (Mich. 17th Cir. Court). Although class certification was denied, I am still lead counsel in 11 separate cases in both state and federal court that sprang from the same allegations.
  - i. Presiding judge in state case: Hon. Christopher P. Yates<sup>1</sup>, 17th Cir. Court for the County of Kent, 180 Ottawa Ave. N.W., Grand Rapids, MI 49503. Presiding

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<sup>1</sup> The Hon. Christopher P. Yates has the most robust experience with the applicant in open court.



judges in federal cases: Hon. Robert Holmes Bell, The Hon. Phillip J. Green, U.S. Dist. Court for the W.D. of Michigan, 602 Federal Building, 110 Michigan St. N.W., Grand Rapids MI 49503;.

- d. *Barbara's Sales, Inc. v. Intel Corp.*, No. 5-05-0078 (Ill. Cir. Court, 3rd Judicial Cir., Madison County, Illinois). As part of a large team at Jenner & Block, I helped defend Dell Corp. in a class action against several computer manufacturers alleging that the name "Pentium 4" was misleading.
  - i. Presiding judge: The Hon. Ralph Mendelsohn, Madison County Cir. Court, 157 N. Main St., Edwardsville, IL 62025-1963.
- e. *Carnegie v. Household, Int'l and H&R Block, Inc.*, No. No. 98 C 2178 (N.D. Ill.) I helped defend H&R Block in a nationwide class action alleging deceptive trade practices and consumer fraud relating to the "Rapid Refund" product.
  - i. Presiding judge: The Hon. Elaine E. Bucklo, U.S. Dist. Court for the N.D. Ill., Everett McKinley Dirksen U.S. Courthouse, 219 South Dearborn St., Chicago, IL 60604.

(2) Please see the contact information for the judges listed above.

- (3) I am willing and able to work immediately on this important litigation. I can delegate my existing caseload to my firm colleagues, and I will be able to dedicate the time and effort required of me.
- (4) I am willing and able to work cooperatively with all counsel. My recent practice involves negotiating and drafting complex settlement arrangements with major banks and their counsel. This requires professionalism, patience, and an attention to detail that will be very helpful in this case. Further, because I only represent one set of putative class representatives in this litigation<sup>2</sup>, neither I, nor my firm, would allow our client's or firm's potential compensation to interfere with our cooperation.
- (5) I have access to resources that will assist all plaintiffs in prosecuting their claims in a timely manner, especially regarding the review, production and handling of ESI. I have been a leader in the area of e-discovery for several years, both in academia and in practice. **I have a working relationship with Elijah Ltd., a national e-discovery vendor that is a Best-in-Service Relativity partner with substantial experience providing services to plaintiffs in large scale MDL matters.** I confirmed this application with Elijah. With their help, I can coordinate and manage an e-discovery platform through which plaintiffs could perform all e-discovery tasks necessary for the timely litigation of this matter.
- (6) Although I am an experienced trial attorney, my best use would likely be as a member of the steering committee tasked with overseeing the e-discovery portion of the lawsuit(s). I am, however, willing to serve in any capacity that assists this Court.

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<sup>2</sup> *Bookwalter, et al. v. Volkswagen Group of Am., Inc., et al.*, No. 15-14250 (E.D. Mich.).



- (7) The clients on whose behalf I have already filed a lawsuit are vehicle owners. However, I will serve in any capacity that would assist the Court.
- (8) My breadth and variety of experience, my recent work resolving complicated cases, and my strong focus on e-discovery, would likely assist the Court and parties.
- (9) During my career, I have represented The Knights of Columbus, H&R Block, Dell, APC, GE, Deutsche Bank National Trust Company and many other clients. I have significant experience in contract disputes, policyholder insurance coverage litigation, UCC, Art. 2 and automotive supply chain matters, securities fraud, Civil RICO, unfair competition litigation, trade secret and non-compete disputes, consumer fraud cases, class action litigation, A.G. and F.T.C. investigations, and e-discovery disputes.

My career began at Jenner & Block LLP in Chicago where I litigated disputes for Fortune 500 corporations. One highlight was obtaining a \$1.1 million jury award in an Illinois Hate Crimes case that I handled *pro bono*. I was also part of a large team that worked on one of the leading e-discovery cases, *Coleman (Parent) v. Morgan Stanley*.

From 2008-2012, I taught Contracts and eDiscovery at the Western Mich. Univ., Cooley Law School. From 2012-2014, I taught an Advanced Discovery workshop as an Adjunct Professor at The John Marshall Law School in Chicago, Illinois.

I have presented on the topic of e-discovery for: (1) Michigan's ICLE (since 2008 and including at the 2015 State Bar of Michigan's annual meeting); (2) the Univ. of South Carolina Law Review Symposium on Law and Technology in 2013 where I served as a panelist with noted members of the judiciary, **Judges Facciola, Grimm and Scheindlin**; (3) the William Campbell Law Review Symposium in Raleigh, North Carolina; (4) the IQPC 8th E-Discovery Conference in New York; (5) the 13th IQPC West E-Discovery Conference in San Francisco, California, and several other organizations as described in my résumé. I have also written law review articles that were published on e-discovery.

At John Marshall, where I graduated *summa cum laude*, I was the Lead Articles Editor for the Law Review and served as a Moot Court and Trial Advocacy member. I was also on the Willem C. Vis International Arbitration Competition Team in Vienna, Austria for which I later served as the school's Coach in 2003 and 2004. I was a PILI Fellow at the University of Chicago Law School's MacArthur Justice Center in 2002 and an extern for **The Hon. Robert W. Gettleman**, U.S. Dist. Court for the N.D. Ill. in 2001.

The other counsel who have filed cases in this MDL who support my appointment are listed in the attached Exhibit.

Date: January 8, 2016

Respectfully Submitted,

By:   
Derek S. Witte  
Talcott Franklin P.C.